



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0393]

RIN 1625-AA00

Safety Zone; Mississippi River, Mile Marker 230.0 to Mile Marker 237.0, in the Vicinity of Baton Rouge, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River (LMR) beginning at mile marker (MM) 230.0 and ending at MM 237.0, in the vicinity of Baton Rouge, Louisiana. The safety zone is needed to protect persons and vessels from the potential safety hazards associated with a maritime salvage operation. Entry into this zone is prohibited unless vessels have met the specified instructions or are specifically authorized by the Captain of the Port New Orleans or a designated representative.

DATES: *Effective date:* This rule is effective in the CFR from [INSERT DATE OF PUBLICATION], until 7 a.m. CST October 1, 2012. This rule is effective with actual notice for purposes of enforcement beginning 7 a.m. CST on June 2, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0393 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0393 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant (LT) Chris Norton, Marine Safety Unit Baton Rouge, at 225-298-5400 x230, Christopher.R.Norton@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
LMR	Lower Mississippi River
MM	Mile Marker

A. Regulatory History and Information

A temporary safety zone for salvage operations resulting from high water incidents in the spring of 2011 was established under docket number USCG-2011-1077 (76 FR 60733). That safety

zone was required as a safety measure to ensure protection for persons and vessels involved in the salvage operations and expired on February 15, 2012 when salvage was suspended due to river and weather conditions. This temporary final rule establishes a new safety zone implementing safety measures required for these salvage operations to now resume.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice on May 14, 2012 that McKinney Salvage and Heavy Lift Inc. would resume maritime salvage operations in the vicinity of Baton Rouge, Louisiana. Due to forecasted river level stages averaging in the teens on the Baton Rouge river gauge around June 2, 2012, the opportunity to resume salvage operations is ideal and presents an immediate need for this safety zone. There is not time to performing the NPRM process for this rule without delaying the effective date for the temporary safety zone. Delaying this safety measure is contrary to the public interest

because immediate action is necessary to protect the salvage crew, vessels, and mariners from the hazards associated with ongoing maritime salvage operations.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The Coast Guard received notice on May 14, 2012 that McKinney Salvage and Heavy Lift Inc. would resume maritime salvage operations in the vicinity of Baton Rouge, Louisiana. Providing 30 days notice would be contrary to the public interest because it would delay the immediate action necessary to protect the salvage crew, vessels, and mariners from the hazards associated with ongoing maritime salvage operations.

B. Basis and Purpose

On May 14, 2012 the Coast Guard received notice that salvage operations would resume on the LMR from MM 230.0 to MM 237.0. These operations will begin on 7 a.m. CST June 2, 2012, and continue until 7 a.m. CST October 1, 2012. The Coast Guard determined that a safety zone is needed to protect the public, mariners, and vessels from the hazards associated with salvage operations the waterway. The operations that will be conducted are critical to maintaining safe navigation on the LMR. Any wake, beyond that created at minimum safe speed, or external force exerted on the salvage platform can compromise the safety of the salvage crew.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones. To safeguard persons and property from the hazards associated with salvage operations performed on a waterway, the COTP New Orleans will establish a safety zone on the LMR from MM 230.0 to MM 237.0, 7 a.m. CST June 2, 2012, until 7 a.m. CST October 1, 2012.

C. Discussion of the Rule

The Captain of the Port New Orleans will implement a Safety Zone on the LMR extending the entire width of the river from MM 230.0 to MM 237.0. Mariners will be subject to requirements that will be listed in Marine Safety Information Bulletins from 7 a.m. CST on June 2, 2012 until 7 a.m. CST on October 1, 2012.

The temporary safety zone is needed due to McKinney Salvage and Heavy Lift Inc. conducting ongoing maritime salvage operations in the vicinity of MM 230.0 to MM 237.0 on the LMR. The operations that will be conducted are critical to maintaining safe navigation on the LMR. Any wake, beyond that created at minimum safe speed, or external force exerted on the salvage platform can compromise the safety of the salvage crew.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule establishes additional safety restrictions necessary for transit on the LMR from MM 230.0 to MM 237.0, in the vicinity of Baton Rouge. These additional safety restrictions do not prevent safe transit through the area. Due to its duration and limited scope, this rule does not pose a significant regulatory impact.

Additionally, notifications of this rule's effective dates and times and any changes to the rule will be made to the marine community through Marine Safety Information Bulletin's (MSIB) & Broadcast Notice to Mariners (BNM).

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the LMR between MM 230.0 and 237.0 from 7 a.m. CST on June 2, 2012 until 7 a.m. CST on October 1, 2012. This safety zone will not have a significant economic impact on a substantial number of small entities because vessels are still able to transit the area under the established safety restrictions which are also listed in Marine Safety Information Bulletins. Additionally, Broadcast Notices to Mariners will provide dates and times when the salvage operations will take place during the effective period and any changes in the intended salvage operations schedule. If you are a small business entity, contact LT Chris Norton, Marine Safety Unit Baton Rouge, at (225) 298-5400 or Christopher.R.Norton@uscg.mil.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the

National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule establishes a temporary safety zone on the Mississippi River to protect persons and vessels from the potential safety hazards associated with maritime salvage operations and is over one week in duration. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

E. List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and record - keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and

160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T08-0393 to read as follows:

§ 165.T08-0393 Safety Zone; Mississippi River, Mile Marker 230.0 to Mile Marker 237.0, in the Vicinity of Baton Rouge, LA

(a) Location. The following area is a safety zone: All waters of the Lower Mississippi River (LMR) beginning at mile marker (MM) 230.0 and ending at MM 237.0, extending the entire width of the river, in the vicinity of Baton Rouge, Louisiana.

(b) Effective and enforcement date. This section is effective during the transits of all vessels upriver and downriver from 7 a.m. CST June 2, 2012, until 7 a.m. CST October 1, 2012. This rule is effective with actual notice for purposes of enforcement beginning 7 a.m. CST on June 02, 2012.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless vessels have met the specific instructions or are authorized by the Captain of the Port New Orleans or designated representative as further explained below.

(2) Persons or vessels requiring entry into or passage through must have met the specific instructions or request permission from the Captain of the Port New Orleans or a designated representative.

(3) All persons and vessels shall comply with the

instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(4) The instructions of the Captain of the Port are as follows: The Captain of the Port New Orleans has implemented a Safety Zone on the LMR extending the entire width of the river from MM 230.0 to MM 237.0. This operation will continue from 7 a.m. CST on June 2, 2012 until 7 a.m. CST on October 1, 2012.

(d) Informational broadcasts. The Captain of the Port, New Orleans or a designated representative will inform the public through Broadcast Notices to Mariners and/or Marine Safety Information Bulletins of the effective period for the safety zone, requirements, and of any changes in the effective period, requirements or size of the safety zone.

DATED: May 29, 2012

J.J. Arenstam,
Captain, U.S. Coast Guard
Acting Captain of the Port New Orleans

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